

“In deciding a pretrial motion to dismiss for lack of personal jurisdiction a district court has considerable procedural leeway.” *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981). District courts have “wide latitude to determine the scope of discovery,” and to allow jurisdictional discovery. *Frontera Res. Azerbaijan Corp. v. State Oil Co. of the Azerbaijan*

Republic, 582 F.3d 393, 401 (2d Cir. 2009). Such discovery may be authorized where plaintiff has made “a threshold showing that there is some basis for the assertion of jurisdiction.” *Daval Steel Prods. v. M.V. Juraj Dalmatinac*, 718 F. Supp. 159, 162 (S.D.N.Y. 1989); *see also Strategem Dev. Corp. v. Heron Int’l N.V.*, 153 F.R.D. 535, 547–48 (S.D.N.Y. 1994) (authorizing jurisdictional discovery where plaintiff “made a sufficient start” toward establishing jurisdiction). The Second Circuit has explained that jurisdictional discovery may be appropriate even in the absence of a *prima facie* showing as to the existence of jurisdiction. *In re Magnetic Audiotape Antitrust Litig.*, 334 F.3d 204, 207–08 (2d Cir. 2003) (per curiam); *Ikeda v. J. Sisters 57, Inc.*, No. 14 civ. 3570, 2015 WL 4096255, at *8 (S.D.N.Y. July 6, 2015); *see also Ehrenfeld v. Mahfouz*, 489 F.3d 542, 550 n.6 (2d Cir. 2007) (stating that it would be “legal error” for a district court to “forbid[] jurisdictional discovery any time a plaintiff does not make a prima facie showing of jurisdiction”).

The Court finds that Plaintiff is entitled to limited jurisdictional discovery regarding personal jurisdiction and alter ego status. Regarding personal jurisdiction, Plaintiff puts forth allegations based on Milton “Todd” Ault III’s (“Ault”) activities in New York. (Am. Compl. ¶¶ 7–14.) Regarding the allegation that DPW acted as Super Crypto’s alter ego, Plaintiff alleges that (1) DPW is the sole shareholder of Super Crypto; (2) DPW and Super Crypto are located at the same address, share common office space, and have the same attorneys; (3) DPW and Super Crypto made no distinction between themselves regarding their obligations to Plaintiff; and (4) DPW exercised complete domination over Super Crypto with regard to the Agreement. (Am. Compl. ¶¶ 57–69.) At the current stage of litigation, Plaintiff has made a sufficient threshold showing toward establishing personal jurisdiction and alter ego status.

While the Court has determined that Plaintiff has met the threshold for limited discovery, the Court shall permit such discovery “only to verify the allegations of specific facts crucial” to

establishing Plaintiff's personal jurisdiction and alter ego theory. *First City, Texas-Houston, N.A. v. Rafidain Bank*, 150 F.3d 172, 176 (2d Cir. 1998) (citing *Arriba Ltd. v. Petroleos Mexicanos*, 962 F.2d 528, 534 (5th Cir. 1992)).

Therefore, the Court shall authorize Plaintiff to proceed with formal service of Interrogatory No. 1, which shall be limited to the activities of Ault. The Court shall not allow Plaintiff to seek limited discovery regarding "any other officer, director or other agent of DPW" as that request is overbroad at this stage litigation. (See ECF No. 50, Interrogatory No. 1.) Additionally, the Court authorizes Interrogatory Nos. 2, 5. Regarding Plaintiff's Requests for Production of Documents, the Court authorizes Plaintiff to proceed with formal service of Request Nos. 1, 3, 8, 9, 10. Additionally, Defendants shall proceed with its proposed search terms as outlined in its October 16, 2020 letter to the Court. (ECF No. 52.) The Court imposes a temporal limitation of January 1, 2018 to December 31, 2018 for all limited discovery.


The Court declines to authorize Interrogatory Nos. 3, 4, 6, 8 and Request Nos. 2, 4, 5, 6, 7. "Discovery need not be granted to allow a plaintiff to engage in an unfounded fishing expedition for jurisdictional facts." *Togut v. Forever 21, Inc.*, 285 F. Supp. 3d 643, 648 (S.D.N.Y. 2018) (quoting *Vista Food Exch., Inc. v. Champion Foodservice, LLC*, 124 F. Supp. 3d 301, 315 (S.D.N.Y. 2015)).

For the foregoing reasons, Plaintiff's request for jurisdictional discovery is granted in part and denied in part. Accordingly, the court denies Defendants' motion to dismiss without prejudice. (ECF Nos. 32, 37.) Plaintiff shall complete the limited discovery by March 4, 2021. The parties shall file a joint status letter by March 8, 2021, at which time the Parties shall propose a briefing schedule for the motion to dismiss the amended complaint.

SO ORDERED.

Dated: December 4, 2020

New York, New York



ANDREW L. CARTER, JR.
United States District Judge